

VII. EARNINGS RATE ON DECOMMISSIONING TRUST FUNDS

In Docket 97-0110, the Commission approved the use of after-tax trust fund earnings rates of 6.26% for the nontax-qualified trusts and 7.30% for the tax-qualified trusts. Commonwealth Edison Co., ICC Docket No. 97-0110 (Feb. 19, 1998) at 3. These rates were premised upon the Commission's order limiting ComEd's investments in equity securities to 60% of the total market value of the decommissioning trusts.

In Docket 99-0238, ComEd requested authority to increase the limitation on equity investments to 65% of the market value of the trusts. ComEd explained that increasing the equity investment limitation would avoid the necessity for ComEd to sell appreciated equity securities in the trusts, thereby incurring income tax obligations, merely to remain within the 60% limitation. An increase in the percentage of equity investments in the trusts was also consistent with similar authority granted to Illinois Power and Ameren with respect to decommissioning trusts. ComEd Ex. 11 (Berdelle Direct) at 15-17, Docket 99-0115.

By an order dated July 8, 1999, the Commission granted ComEd's request and raised the equity investment percentage limitation to 65%. Based on the new 65% equity investment limitation, it became necessary to revise the trust fund earnings rates to reflect the increase in higher-return equity investments. The new after-tax trust fund earnings rates for the nontax-qualified trusts is 6.83% and for the tax-qualified trusts is 7.49%. The parties have generally agreed that those rates are appropriate for use in this proceeding, assuming an overall after-tax trust fund earnings rate of 7.3%, and the Commission accepts this argument.

VIII. POWER UPRATE/LICENSE RENEWAL/LIFE EXTENSION

A. License Renewal/Life Extension

ComEd, in estimating the costs of decommissioning its nuclear units, assumed that the units would operate until the end of their current licenses that have been issued by the NRC. The decommissioning cost studies that were performed by TLG with respect to the ComEd nuclear units each assumed that the units would operate until the end of their licensed lives. TSL-3 - TSL-8, § 2.1. Decommissioning work would then begin after station operations were ended.

Staff and several Intervenors criticized ComEd for basing its cost estimates on the assumption that the nuclear units would operate only until their current licenses expired and not thereafter. They claimed that the licenses for the units would be renewed by the NRC, and that the units (or at least some of them) would operate for a period of up to twenty additional years. They further claimed that this increased period of unit operations would allow greater amounts to accrue in the decommissioning trust funds, and the amount needed for decommissioning work at the present time would therefore be reduced. See, e.g., ICC Staff Ex. 2 (Riley Direct) at 8.

In response, ComEd presented L. Joseph Callan, the NRC's former Executive Director of Operations. Among other duties as Executive Director of Operations, which is the senior Staff position with the NRC, Mr. Callan managed and oversaw development by the NRC Staff of the

NRC's policy and procedures with respect to license renewal. ComEd Ex. 9 (Callan Rebuttal) at 3-4.

Mr. Callan testified that some of the witnesses in this case had incorrectly characterized license renewal "as essentially an NRC 'rubber stamp' which should be counted on by the . . . Commission in this proceeding." *Id.* at 1. Mr. Callan disagreed, testifying that, based on his extensive experience with the NRC, there were "too many uncertainties" associated with the NRC renewing the licenses of ComEd's nuclear units for the Commission to base a policy decision on the presumption that license renewal will occur. Callan, Tr. 844. This is because license renewal at the NRC is a "lengthy, costly and arduous process" in which the NRC considers "technical and operational" issues, such as "identifying critical long-lived structures and components which are potentially subject to age related degradation...." ComEd Ex. 9 (Callan Rebuttal) at 5-6. Mr. Callan concluded that "there is no assurance that the NRC will approve a license extension for any one of ComEd's units, much less all of them as stated by Mr. Schlissel." *Id.* at 9. Mr. Callan testified that with respect to ComEd's Dresden and Quad Cities Stations, no boiling water reactor plants of the same vintage and type have received license renewal from the NRC. *Id.* at 4.

ComEd witnesses Callan and Speck further testified as to a number of contingencies which could require the Nuclear Stations to shut down before the end of their present licensed lives or any extended licensed lives. These include: (1) the risk that nuclear power plants (such as ComEd's) that received operating licenses between 1969 and 1988 will not remain economically viable until the mid-21st century; (2) the risk that the Genco, after considering other available generating options, will choose not to make the additional investments that will be necessary to operate nuclear plants beyond their existing license expiration dates. ComEd Ex. 12 (Speck Rebuttal) at 38-39; ComEd Ex. 9 (Callan Rebuttal) at 11-12.

These witnesses noted that at the present time, no nuclear unit has operated beyond the end of its original license term. ComEd Ex. 9 (Callan Rebuttal) at 4; ComEd Ex. 12 (Speck Rebuttal) at 39.

Finally, ComEd witness Speck testified that even if the NRC renewed the licenses for some of ComEd's nuclear units, and even if these units actually continued to operate for the entire renewal period, there still would be no assurance that there would be savings in the amounts presently needed to decommission the units. Mr. Speck observed that the "only scenario in which a license extension could reduce forecast decommissioning cost requirements would be if [decommissioning trust] investment earnings could be expected to grow faster than cost escalation" during the extended period of unit operations. ComEd Ex. 7 (Speck Supp. Direct) at 6. However, this "scenario" had not been the actual experience in the nuclear industry. In fact, the opposite had been true in the past and historically decommissioning costs have increased at a higher rate than investment earnings. ComEd Ex. 7 (Speck Supp. Direct) at 7, citing Berdelle Direct Testimony, ICC Docket No. 99-0115, at 10-11, 16-17. He thus concluded that "[i]t would be unreasonable to assume today that investment income during a license extension period will be significantly greater than decommissioning cost escalation." ComEd Ex. 7 (Speck Supp. Direct) at 7. If this pattern were to continue, the amount of decommissioning costs would actually increase over the period in which the nuclear units operated beyond the

expiration of their original NRC licenses. In such an event, license renewal and life extension at the nuclear units could actually increase decommissioning costs, and would not result in cost savings as the Staff and Intervenor contend.

ComEd witness Manshio stressed from his perspective as a former Commissioner that it would be "at best premature and or worst irresponsible" to assume that "plant life extension will occur and necessarily lower costs." ComEd Ex. 11 (Manshio Rebuttal) at 3.

B. Power Uprate

CUB witness Mr. Schlissel referred to ComEd's plans for power uprates at Dresden and Quad Cities Stations, and claimed these showed that operations would extend beyond the licensed lives of these stations. In response, Mr. Callan testified that this is error, and that power uprate plans have nothing to do with whether a licensee will operate the stations beyond the end of their current licenses. ComEd Ex. 9 (Callan Rebuttal) at 12-13. On cross-examination, Mr. Schlissel admitted that ComEd's documents indicated that the power uprates would pay for themselves within one to three years, well before the end of stations' license terms. Schlissel, Tr. 629-30.

C. Commission Conclusion

There is substantial uncertainty concerning how long the nuclear units will operate, whether any units will receive license renewal by the NRC, and whether operation of the nuclear units beyond the end of their licensed lives will reduce the amounts needed for decommissioning. The record shows there is considerable uncertainty over whether the NRC will renew the licenses of any of ComEd's nuclear units, and there is additional uncertainty over whether the units would actually continue to operate even if NRC license renewal were obtained. Finally, even if both of these things occur, past experience concerning the difference in the rate between the escalation of decommissioning costs and the growth of trust fund assets indicates that license renewal and life extension could increase (and not decrease) decommissioning costs. In light of these circumstances, the Commission concludes that it would be inappropriate to assume that the units will operate beyond their original license term for the purpose of considering whether ComEd's proposal is just and reasonable.

IX. METHOD OF DECOMMISSIONING

A. ComEd's Position

In estimating the decommissioning costs for its operating nuclear stations, the TLG cost studies for the nuclear stations recommended that ComEd follow the "DECON" method of station which "involves removal of all radioactive material from the site following station shutdown." TSL-3, § 1, at 1. TLG explained that, in most situations, the DECON alternative is the preferred mode of decommissioning because it eliminates the costs for caretaking and preventing a station from becoming a potential long-term safety hazard. TSL-3 – TSL-8, at xii.

B. Intervenors' Position

Several Intervenor witnesses claimed that substantial cost savings could be realized if the decommissioning of the nuclear stations were to be delayed for a substantial period after the end of station operations. CUB witness Biewald testified, for example, that "a delay in the dismantlement of the [ComEd] units . . . is highly probable," and that ComEd could thereby "earn additional interest on the [decommissioning] trust funds." See, e.g., CUB DT Ex. 1.1 – P (Biewald Direct) at 4, 13.

In response, ComEd witness Thomas LaGuardia explained why it was incorrect to believe that substantial savings could be achieved through delayed decommissioning of the nuclear stations. First, he explained that the argument for delay ignores the substantial costs for maintenance and other expenses that would be incurred if delayed decommissioning were undertaken. These costs are associated with maintaining station equipment and structures for the extended period after station operations so that decommissioning could be safely performed. ComEd Ex. 10 (LaGuardia Rebuttal) at 3. This is especially true since substantial portions of any such station will still be radiologically contaminated and therefore in need of special and constant maintenance attention.

Second, Mr. LaGuardia explained that it was error to assume that during the period in which decommissioning was delayed, trust fund assets would grow at a rate that would be higher than the rate of decommissioning cost escalation. E.g., CUB DT Ex. 1.1-P (Biewald Direct) at 4. He testified that, as a general matter, delayed decommissioning was not advisable because of the risk of substantially increased costs relating to low level radioactive waste disposal and increasingly stringent regulatory requirements concerning decommissioning. ComEd Ex. 10 (LaGuardia Rebuttal) at 4. He, therefore, concluded that these risks outweighed any benefits of delayed decommissioning.

ComEd witness Speck agreed with Mr. LaGuardia and testified that "the historical spread between decommissioning cost escalation rates and the decommissioning trust fund growth rates suggests that deferral of decommissioning" – such as through the delayed decommissioning approach – "may exacerbate -- not magically remedy -- any funding shortfall" with respect to amounts needed for decommissioning. ComEd Ex. 12 (Speck Rebuttal) at 43.

C. Commission Conclusion

There is no assurance that delayed decommissioning would lead to reduced decommissioning costs. In fact, ComEd's witnesses, including TLG, the leading expert in decommissioning cost estimation, testified that the opposite would be true. History shows delay could even lead to funding shortfalls. The Commission therefore rejects the argument that delayed decommissioning will reduce decommissioning costs. ComEd will be permitted to recover the amounts for decommissioning it is seeking here without any reduction relating to purported savings resulting from the delayed decommissioning of the Nuclear Stations.

X. CONTINGENCY FACTORS

A. ComEd's Position

The TLG decommissioning cost studies for ComEd's nuclear stations included costs related to "contingency factors." In ComEd's 1997 decommissioning case, the Commission approved of the use of contingency factors in the TLG cost studies. The Commission concluded:

[W]e are of the opinion that Mr. LaGuardia properly applied activity-by-activity contingency allowances which properly reflect unpredictable field problems which may arise. The Commission is satisfied that his past experience with decommissioning projects indicates that problems will occur to cause the decommissioning contractor to deviate from the optimal performance of the decommissioning tasks which is assumed in the cost estimate. . . We also would note that elimination of the contingency factor may violate the NRC minimum funding requirement.

Commonwealth Edison Co., ICC Docket No. 97-0110, at 9 (Order, February 19, 1998).

B. Intervenors' Position

Certain intervenors criticized the use of contingency factors in the TLG studies. Attorney General witness Effron referred to the Commission Order in Docket 94-0065 entered on January 9, 1995 in support of his position. Attorney General Ex. 1 (Effron Direct) at 12. There, the Commission did not approve of the use of contingency factors in the TLG decommissioning cost studies. However, Mr. Effron neglected to mention the Commission's later Order in Docket 97-0110, where, as stated above, the Commission approved of TLG's use of contingency factors.

Mr. Effron also testified that the collection of costs related to contingency amounts was inappropriate in the present situation where ComEd planned to transfer its nuclear units to "a non-utility affiliate." Id. at 13. He had testified that "the application of a contingency allowance for unspecified costs . . . that may never be incurred . . . has the potential to confer a substantial windfall to investors, at the expense of ratepayers." Id.

After Mr. Effron's testimony was filed, however, Mr. Berdelle submitted testimony clarifying and providing that ComEd through this proceeding will ensure the return of any surplus that remains in the decommissioning trust funds after the completion of decommissioning work to ratepayers. ComEd Ex. 8 (Berdelle Rebuttal) at 2. This commitment eliminates any risk that a windfall would accrue to the benefit of ComEd's investors if contingency factor amounts were included in ComEd's proposed decommissioning collections.

C. Commission Conclusion

The Commission has previously approved of the inclusion of contingency factors in the TLG decommissioning cost studies. Commonwealth Edison Co., ICC Docket No. 97-0110 at 9. Moreover, any possible claim that consideration of contingency factor amounts in this case

would result in a "windfall" to ComEd's investors has been fully addressed by ComEd's clarifications and modifications to its decommissioning proposal that are discussed above. Including the contingency factor amounts in the decommissioning estimates is necessary to ensure that there are adequate funds available for decommissioning.

XI. SITE RESTORATION

A. ComEd's Position

ComEd explained why for safety and economic reasons, non-radiological decommissioning is a necessary part of the decommissioning process. ComEd Ex. 13 (Thayer Rebuttal) at 8; ComEd Ex. 10 (LaGuardia Rebuttal) at 9-10. As noted above, ComEd estimates of the costs of performing the non-radiological decommissioning activities described in the TLG studies were not contested by any party. No alternative studies of the costs of non-radiological decommissioning activities were introduced.

B. Staff and Intervenors' Position

Several parties argued that if any portion of ComEd's proposed \$120.9333 million decommissioning recoveries are intended to be used for non-radiological decommissioning, those amounts should be removed because there is no assurance that the funds will be devoted to performance of non-radiological decommissioning activities. In response, ComEd explained that it has eliminated any basis for these concerns because it has committed that "non-radiological" decommissioning will be performed at the nuclear stations to the extent that there are funds available in the decommissioning trust funds after the "radiological" decommissioning process is completed.

Moreover, ComEd has addressed Staff's specific concern that there be a legal obligation to expend trust fund money for non-radiological decommissioning. Mr. Berdelle explained that the trust agreements governing the use of decommissioning funds will provide that, to the extent that funds are available after completion of radiological decommissioning, such trust funds will be used for non-radiological decommissioning. ComEd Ex. 8 (Berdelle Rebuttal) at 16-17. As Mr. Berdelle further explained during cross-examination:

[T]here were parties that raised an issue that Edison – or the Genco somehow would use funds in the trust only to satisfy radiological decommissioning and then refund that money back to the Genco, and non-radiological decommissioning [would] not be performed. So this is a commitment – a stated commitment that the company would require the Genco to use the funds in the trust for both radiological and non-radiological decommissioning.

Berdelle, Tr. 968-69.

C. Commission Conclusion

Based upon the record, the Commission finds that decommissioning funds will be used only for decommissioning. None will be retained by Genco. To the extent that such funds are available, Genco will be legally obligated to use them to perform radiological and non-radiological decommissioning activities. In the unlikely event that funds remain after the completion of radiological and non-radiological decommissioning at the nuclear stations, those funds will be refunded to ratepayers.

XII. POWER PURCHASE AGREEMENT

A. Generally

Under its proposal, ComEd will transfer the Nuclear Stations to the Genco. Robert K. McDonald, Vice President of Exelon, testified that a central feature of the transfer is the PPA under which the Genco will sell power and energy to ComEd. ComEd Ex. 3 (McDonald Direct) at 5. Mr. McDonald testified that the provisions of the PPA provide substantial benefits including a fair price, and a reliable source of power and energy for customers during the six-year contract term.

Mr. McDonald explained the key prices, terms and conditions of the PPA:

- **Term and Quantities.** Under the PPA, Genco will supply all of ComEd's requirements from the date of the Transfer through December 31, 2004 (the "Initial Term"). Subsequent to the Initial Term, in 2005 and 2006, Genco will serve ComEd's energy and capacity requirements up to the available capacity of the transferred nuclear units. Id. at 5-6.
- **Pricing.** ComEd will pay only an energy charge, with no separate capacity charge. The PPA sets forth a schedule of energy prices, on- and off- peak, by month for the Initial Term. Prices for the years 2005 and 2006 will be set at then-prevailing market rates, and will be filed with the FERC for the FERC's approval. Id. at 6.
- **Reliability.** Genco will be able to serve ComEd from the same resources that ComEd has today: the ComEd nuclear units, the various Fossil Plant Agreements and market sources. The Transfer will not limit or reduce the resources available to serve ComEd and its customers. Id. at 8.

Mr. McDonald explained that during the Initial Period the PPA will have no rate impact on ComEd customers. This is because base rates are frozen at reduced levels required by Article XVI of the Act during the Mandatory Transition Period provided by the Act, through January 1, 2005. In addition, ComEd does not have a fuel adjustment clause to flow through actual costs of power and energy. Accordingly, ComEd bears any risk of price variations. There also will not be any unreasonable impact on the price of power and energy paid by customers during the years

2005 and 2006. The price of energy under the PPA during those two years would be the prevailing market price, subject to Federal Energy Regulatory Commission approval. ComEd Ex 3 (McDonald Direct) at 6. The rates charged to retail customers will be subject to approval by the Commission.

Staff and certain Intervenor witnesses originally objected to the 6 year term because of concerns that ratepayers should not have to pay if ComEd did not actually purchase power from the Genco in 2005 and 2006. See, e.g., ICC Staff Ex. 2 (Riley Direct) at 10. However, after this testimony was submitted, ComEd clarified and revised its proposal to provide that if ComEd does not purchase power from the Genco in 2005 and 2006, ComEd will not collect decommissioning funds for ratepayers for those years. The proposed decommissioning resolution therefore provides for ComEd's customers to contribute toward the cost of decommissioning for the six years during which they will be receiving power from the stations. ComEd Ex 3 (McDonald Direct) at 9.

B. Timing Of Collections By ComEd And Distributions To Genco/Trust

ComEd's witnesses testified that ComEd's proposal provides for a simple and straightforward method of collecting customers' contributions for decommissioning costs, and distributing funds to the decommissioning trusts. ComEd Vice President and Comptroller Robert E. Berdelle explained that:

- Upon transfer of the Stations to the Exelon Genco, ComEd's existing obligations for decommissioning will be assumed by the Genco.
- To provide the Genco with a portion of the funds needed for decommissioning, the assets in ComEd's decommissioning trusts will be transferred to the Genco along with the Stations.
- ComEd will collect the decommissioning amounts approved by the Commission in this proceeding under the provisions of the Public Utilities Act and the Special Decommissioning Rider.
- ComEd will turn over such decommissioning amounts to the Genco, which will pay such funds into the decommissioning trusts for use in decommissioning, consistent with the provisions of the decommissioning trust agreements.

ComEd Ex. 2 (Berdelle Direct) at 4-6.

After approval of ComEd's proposal and closing of the Contribution Agreement, ComEd will also accelerate other payments it is already committed to make to the decommissioning trust funds. As Mr. Berdelle explained, in accordance with the Commission's order in Docket 88-0928, decommissioning costs collected prior to September 12, 1988 ("pre-1989 collections") are contributed to the decommissioning trusts in equal annual installments over the remaining NRC operating lives of each station. Upon approval of its proposal, ComEd will accelerate this schedule by contributing the remaining pre-1989 collection balances to the decommissioning

trusts over the six-year period after the Stations are transferred, thereby increasing contributions for pre-1989 collections from \$5.9 million to approximately \$11.0 million per year. ComEd Ex. 2 (Berdelle Direct) at 12.

C. Commission Conclusion

The evidence concerning the PPA supports approving ComEd's decommissioning proposal in this proceeding as just and reasonable. The six-year term of ComEd's proposal is consistent with both the six-year term of the PPA and the Public Utilities Act. Under the PPA, ComEd's customers would be receiving the benefit of power from the Stations for six years. Six years is the same period of time during which these customers would be contributing to decommissioning funds under ComEd's proposal. In addition, recovery of decommissioning costs for a six-year period is authorized under the Illinois Public Utilities Act. 220 ILCS 5/9-201.5(d). Further, the PPA's methods of collecting customers' contributions for decommissioning and distributing funds to the decommissioning trusts is just and reasonable.

XIII. SPENT FUEL COSTS AND DEPARTMENT OF ENERGY ISSUES

A. Intervenors' and Staff's Position

Under the Nuclear Waste Policy Act of 1982, the DOE was obligated to begin disposing of spent nuclear fuel by January 31, 1998. 42 U.S.C. § 10222(a)(5)(B). The DOE failed to meet its obligation, and has publicly stated that it will not begin to remove spent fuel from any reactor site until at least 2010. ComEd Ex. 12 (Speck Rebuttal) at 21. Nuclear utilities, including ComEd, have asserted claims to recover damages from the DOE for its failure to comply with its spent fuel disposal obligation.

Under the Contribution Agreement, Genco will receive any amounts recovered from the DOE as damages for its non-performance. ComEd Ex. 2 (Berdelle Direct) Exh. 1, Section 2.1(f)(4), Schedule 2.1(f)(4). Coalition witness Bodmer objected that this provision unfairly benefitted Genco. He noted that PECO recently settled with the DOE, reportedly saving Pennsylvania customers \$80 million over the next 10 years. Coalition Ex. 1 (Bodmer Direct) at 9. Additionally, Staff witness Riley argued that recovery of \$71.7 million of spent fuel storage costs at the Zion Station should be eliminated from the decommissioning costs of service and claims this results in a decline of \$1.9 million. ICC Staff Ex. 2 (Riley Direct) at 2, 5.

B. ComEd's Position

In response Mr. Berdelle explained that allowing Genco to receive any recovery from the DOE is just and reasonable because, in Docket 97-0110, the Commission denied ComEd the right to recover spent fuel storage costs arising from the DOE's failure to perform. ComEd Ex. 8 (Berdelle Rebuttal) at 10-13. ComEd argued that since it was denied recovery of the storage costs, since Genco will incur and pay those costs after the transfer, and since ComEd has not asked for these costs in its proposal, it is appropriate that Genco should receive any damages

designed to reimburse all or some portion of these costs. In addition, the existence, timing and sufficiency of a recovery from DOE are all uncertain.

As to the Zion spent fuel costs, Mr. Berdelle explained that, using the 4.74% escalation rate proposed by Staff in Docket 99-0115 leads to an increase in the cost of service by \$.9 million, rather than a decline as Mr. Riley had maintained. ComEd Ex. 8 (Berdelle Rebuttal) at 13. In addition, Mr. Speck noted that differences between the circumstances at Zion and those at issue in the DOE/PECO settlement made that settlement an inappropriate comparison. ComEd Ex. 12 (Speck Rebuttal) at 24.

C. Commission Conclusion

The Commission finds that the record shows that, since Genco will incur the spent fuel storage costs after the transfer, it is appropriate that Genco should receive any damages designed to reimburse all or some portion of those costs including any amounts received from the DOE.

XIV. TRUST ACCOUNTS

A. Generally

As the owner of ComEd's nuclear stations, ComEd is presently also responsible for the decommissioning trusts for each of its nuclear stations. Each nuclear station has two decommissioning trusts. For each station one trust is a tax-qualified decommissioning trust and one trust is a non-tax qualified decommissioning trust. ComEd Vice President and Comptroller Robert E. Berdelle explained that such separate trust funds are maintained because there are limits on the amounts that can be contributed to the tax qualified funds. ComEd Ex. 14, ComEd's Response to Hearing Examiner's Requests Items 1-9, Item 1.

Following this Order, and upon the closing of the Contribution Agreement transaction through which ComEd will transfer the Stations to Genco, ComEd will also transfer "(1) All assets (including investments) held in the Decommissioning Trusts and (2) all funds collected, or to be collected, from ratepayers in respect of Decommissioning Costs..." ComEd Ex. 2 (Berdelle Direct), Attachment 1, Contribution Agreement, at 8.

As an NRC licensee, after the transfer Genco will be subject to NRC regulations regarding decommissioning planning, record keeping and reporting. The NRC will be the federal regulatory agency responsible for determining that Genco has provided reasonable assurance that funds will be available for the decommissioning process, as provided for in 10 CFR § 50.75 relating to financial assurance for decommissioning funding. ComEd Ex. 14, ComEd's Responses to Hearing Examiners' Requests Items 1-9, Item 1.

The source of authority for NRC regulations governing the decommissioning process is the Atomic Energy Act. Pursuant to these regulations, the NRC will continually monitor the amount of funds maintained in the decommissioning trusts to ensure that the funding levels are adequate. The NRC will require additional contributions to the funds if it determines that the

funding levels are not sufficient to ensure that decommissioning will be performed. ComEd Ex. 14, ComEd's Responses to Hearing Examiners' Requests Items 1-9, Item 1.

B. Calculation of the amount transferred into the trusts on 1-1-01

Under ComEd's proposal, the assets contained in the decommissioning trust funds will be transferred in their entirety to the Genco. ComEd explained that the exact amount of that transfer is not known, because the amount will depend upon a number of factors, including the investment returns on the trust fund assets up to the time of the transfer. ComEd emphasized that the precise amount to be transferred is not important to determine, and is not the subject of this proceeding. Rather, the key factor relating to the reasonableness of ComEd's proposal is that the trust funds, as presently constituted, are not sufficient without additional contributions over time to meet the future costs of decommissioning. Under ComEd's proposal, any such additional contributions after payment of the amounts which are the subject of this proceeding will be the responsibility of the Genco.

C. Refunds Of Surplus In Trust Accounts

Mr. Berdelle explained, that in accordance with this order, the trust agreements governing the use of decommissioning funds will provide the following:

Upon completion of decommissioning of the last (13th) ComEd nuclear unit, if any excess funds (after tax) ... remain in the decommissioning trusts, the trust agreements would direct distribution of such excess funds to ComEd for the limited purpose of ComEd refunding such funds to its then current ratepayers. The method for making any such refunds to ratepayers would be proposed by ComEd at that time subject to approval by the Illinois Commerce Commission.

ComEd Ex. 8 (Berdelle Rebuttal) at 17. Mr. Berdelle explained that accordingly, the Commission through its jurisdiction in this proceeding will obtain certainty that if there are any amounts left over in the decommissioning trusts after decommissioning, there is no possibility of any "windfall" to ComEd or the Genco. Rather, any such excess amounts will be refunded to ComEd's then current ratepayers. Id.

D. Commission Conclusion

The evidence shows that ComEd's proposal in this proceeding represents a fair and reasonable resolution of the decommissioning funding question and does not involve any over-recovery of decommissioning funds. Although the best available evidence indicates that approval of ComEd's proposal will not result in a surplus in the trust funds at the end of the decommissioning process, ComEd has provided assurances that, in the unlikely event that the funds in the trusts are in excess of the amounts necessary to decommission all of ComEd's nuclear units, that excess amount will be returned to customers. ComEd Ex. 8 (Berdelle Rebuttal) at 16-17.

E. Effect On Trusts Of A Subsequent Transfer By Genco To A Third Party

The NRC has the authority and obligation to review and to decide whether to grant a transfer of licenses to a proposed new licensee, for example through a sale or transfer of the Stations. One key element of that review is ensuring that the new licensee provides reasonable assurance that there will be adequate funds available to decommission the stations. In the case of the Exelon Genco, the NRC has approved transfer of the licenses for the ComEd stations to the Genco conditioned upon the Exelon Genco using the external sinking fund method of providing assurance of decommissioning funding. ComEd Ex. 14, ComEd's Responses to Hearing Examiners' Requests Items 1-9, Item 2.

In the event of a subsequent transfer of a station by the Exelon Genco to some other proposed licensee, such new proposed licensee would also have to provide reasonable assurance of decommissioning funding pursuant to 10 CFR § 50.75. Based upon ComEd's recent experience concerning transferring the NRC licenses to the Genco, this would need to be accomplished by transferring the decommissioning trusts to the new licensee or another method of providing financial assurance acceptable to the NRC.

XV. DURATION OF DECOMMISSIONING RECOVERIES – FOUR OR SIX YEARS

Staff argues that decommissioning collections should terminate four years after transfer of the nuclear units to Genco. The Commission rejects this suggestion because it conflicts with the evidence in the record, which establishes that collection of \$120.9333 million for 6 years is just and reasonable. The six-year recovery period proposed by ComEd is in accordance with the Commission's authority under the Public Utilities Act, corresponds to the term of the power purchase agreement, is necessary to assure sufficient decommissioning recoveries so that the transfer of the nuclear stations to Genco may proceed, and is therefore approved by the Commission.

A Four-Year Recovery Period Conflicts with the Record. A four-year decommissioning recovery period conflicts with the record because it reduces decommissioning collections by one third without any showing that such a reduction is warranted by the evidence concerning the costs of decommissioning. Using the artificially low, "capped" cost escalation rate of 4.73% and the best available evidence of the cost to decommission ComEd's nuclear stations, collections of approximately \$220 million would be required during the six-year period in order to provide sufficient funds for decommissioning. ComEd's Responses to Hearing Examiner's Post-Record Data Request 5 a). And those assumptions ignore the risk that costs will be substantially higher as a result of changes in work scope, unavailability of low-level waste storage, unreimbursed spent fuel storage costs and other uncertainties. When the evidence establishes that additional recoveries aggregating at least \$1.32 billion are needed (\$220 million times 6) and ComEd has requested approval for only \$720 million of additional collections (\$120 million times 6), Staff's proposal to cut the company's request by \$240 million (2 years of collections at the rate of \$120 million) is inconsistent with the evidence and is rejected.

A Six-Year Recovery Period Is In Accordance With The Commission's Authority Under The Public Utilities Act. Under Section 9-201.5(d) of the Public Utilities Act, the Commission may authorize a decommissioning rate that remains in effect for six years. ComEd's proposal to fix decommissioning recoveries for a six-year period is therefore in accordance with the provisions of the Act. There is no provision of the Public Utilities Act that requires decommissioning collections to terminate after four years as proposed by Staff.

A Six-Year Recovery Period Corresponds To The Term Of The Power Purchase Agreement. The evidence establishes that the power purchase agreement between ComEd and Genco is certain to be in effect for four years and is extremely likely to be in force for the remaining two-year period as well. In response to the objections of some parties that ComEd might not be purchasing power from Genco in 2005 and 2006, ComEd has agreed that no decommissioning payments will be due in 2005 and 2006 unless purchases are being made under the power purchase agreement in those years. The assurance ComEd has provided that the decommissioning recovery period will correspond with the power purchase agreement term provides yet another reason for rejecting Staff's proposed four-year limit on decommissioning recoveries.

A Six-Year Recovery Period Is An Essential Element Of ComEd's Proposal To Transfer The Nuclear Stations To Genco. The Commission finds and concludes that a six-year decommissioning recovery period is an essential part of ComEd's proposal that cannot be changed without fundamentally altering the basis for the proposed resolution. If Staff's position that decommissioning recoveries should take place over a four-year period were adopted, the difference between the recovery periods would have to be recognized in order to preserve the economics of ComEd's proposal and enable the transfer of the nuclear stations to Genco to proceed. In other words, six years of annual recoveries at the \$120.9333 million level translates into four years of recoveries at a \$181 million level, reflecting a spread of the \$240 million of foregone recoveries in years 5 and 6 over the first 4 years (\$240 million divided by 4 equals \$60 million more in each of 2001 through 2004). Confining decommissioning recoveries to a four-year period simply results in an increase in the level of annual collections. ComEd's proposal to fix recoveries at the \$120.9333 level for 6 years is the better approach and Staff's four-year alternative is rejected.

In summary, the Commission finds and concludes that ComEd's proposal has always been based on six years of decommissioning recoveries. The six-year recovery period is supported by the record, by the Public Utilities Act and by the power purchase agreement. The aggregate amount of decommissioning collections provided during the six-year recovery period is necessary to enable Genco to proceed with an acquisition of the nuclear stations. The four-year funding period proposed by Staff conflicts with the record and does not result in a just and reasonable level of decommissioning recovery.

XVI. FINDINGS AND CONCLUSIONS

The Commission, having given due consideration to the entire record and being fully advised in the premises, is of the opinion and finds that:

- (1) Commonwealth Edison Company is a corporation engaged in the generation and distribution of electricity to the public in Illinois, and, as such, is a public utility within the meaning of the Illinois Public Utilities Act;
- (2) the Commission has jurisdiction over ComEd and the subject matter of this proceeding;
- (3) the statements of fact and conclusions of law set forth in the prefatory portion of this Order are supported by the evidence in the record and are hereby adopted as findings of fact and conclusions of law;
- (4) ComEd's Petition is granted, for the reasons discussed herein;
- (5) ComEd's proposed revisions to Rider 31 sought in the Petition are approved;
- (6) ComEd is entitled to recover the full costs of decommissioning, which are estimated by TLG Services in 2000 dollars to total more than \$5.6 billion. The evidence and the record fully supports ComEd's right to recover the six-year \$120.9333 million funding level proposed in the petition, which translates into a decommissioning charge of .141 cents per kilowatt hour. The Commission finds rate to be a just and reasonable rate for purposes of Section 9-201 of the Act;
- (7) ComEd shall cause the trust agreements governing the use of decommissioning funds by Genco to provide the following:
 - A. upon completion at the first of the thirteen ComEd nuclear units of radiological (as defined by the NRC) and, to the extent funds are available, of non-radiological (as described in the LaGuardia testimony and TLG Exhibit 9) decommissioning, and payment for insurance premiums and on-site storage costs to the extent non-reimbursable by the DOE, any excess funds will be distributed from the trusts for that particular unit first to satisfy any tax liability associated with distribution of the funds from the trusts and second to supplement the funds in the trusts for the other ComEd units that have not yet completed decommissioning. The owner of the units will determine which of the remaining trusts should be so supplemented based on an analysis of the relative adequacy of the funding levels in each of the trusts;

- B. as each of the next twelve ComEd units is decommissioned, distribution of any excess funds from the trusts will be handled in the same manner as described in paragraph 7A.
 - C. upon completion of decommissioning of the last (13th) ComEd nuclear unit, if any excess funds (after tax) as described in paragraph 7A remain in the decommissioning trusts, the trust agreements will direct distribution of such excess funds to ComEd for the limited purpose of ComEd refunding such funds to its then current ratepayers. The method for making any such refunds to ratepayers would be proposed by ComEd at that time subject to approval by the Illinois Commerce Commission.
- (8) ComEd's right to collect decommissioning costs under the terms of this order during the fifth and sixth years of the six-year decommissioning collection period is expressly conditioned upon ComEd receiving electric power during 2005 and 2006 from the nuclear generating stations pursuant to the ComEd/Exelon Genco Power Purchase Agreement;
 - (9) before collecting the decommissioning recoveries authorized by this Order, ComEd shall file with the Commission a written statement confirming (i) that it will not seek decommissioning expense recoveries from retail customers in Illinois after collecting decommissioning charges at the rate authorized by this Order for six years; (ii) that it will not seek approval from the Commission for any extension of the six-year decommissioning recovery period or alteration of the annual decommissioning expense recovery amount, regardless of the existence of a shortfall in the assets available in the decommissioning trust funds for decommissioning activities, and (iii) that ComEd expressly waives any right to seek recovery of any such shortfall from ratepayers; and
 - (10) certain assumptions and other factors used to determine the decommissioning costs approved in this Order are reflected in Attachment B to ComEd's Petition and are hereby adopted by the Commission and attached as Appendix A to this Order.

IT IS FURTHER ORDERED by the Illinois Commerce Commission that the Petition submitted by Commonwealth Company of in this proceeding is granted with the modifications discussed herein.

IT IS FURTHER ORDERED that the Commission approves the decommissioning expense adjustment sought by ComEd in the Petition, and that ComEd is entitled to the recovery of the estimated costs of decommissioning its 13 nuclear units identified in the Petition with the modifications discussed herein.

ComEd's Exceptions
Replacement Statements and Findings

IT IS FURTHER ORDERED that all motions, petitions, and objections made in this proceeding that remain undisposed of are hereby disposed of consistent with the ultimate conclusions reached herein.

IT IS FURTHER ORDERED that subject to the provisions of Section 10-113 of the Public Utilities Act and 83 Ill. Adm. Code §200.880, this Order is final; it is not subject to the Administrative Review Law.

By Order of the Commission this _____ day of _____, 2000.

(SIGNED) RICHARD L. MATHIAS
(Chairman)

XVII. CONCLUSION

For all of the reasons described in ComEd's Brief on Exceptions, ComEd respectfully requests that the Commission adopt the foregoing replacement language and enter a final order approving ComEd's petition.

November 1, 2000

Respectfully submitted,

HOPKINS & SUTTER

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STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

COMMONWEALTH EDISON COMPANY

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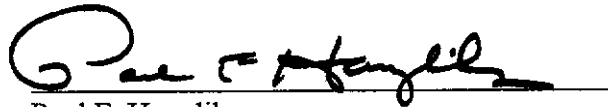
Petition for Approval of a Revision to
Decommissioning Expense Adjustment Rider to
Take Effect on Transfer of ComEd's Generating
Stations

NOTICE OF FILING

TO: Attached List

PLEASE TAKE NOTICE that on this date we have filed with the Chief Clerk of the Illinois Commerce Commission, 527 East Capitol Avenue, Springfield, Illinois 62701, Commonwealth Edison Company's Brief on Exceptions and Suggested Replacement Statements and Findings in the above entitled matter.

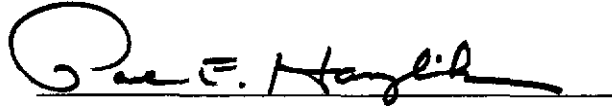
DATED: November 1, 2000


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CERTIFICATE OF SERVICE

I, Paul F. Hanzlik, do hereby certify that copies of Commonwealth Edison Company's Brief on Exceptions and Suggested Replacement Statements and Findings were served upon all parties on the attached list via e-mail and by the method indicated on the list.

A handwritten signature in black ink, appearing to read "Paul F. Hanzlik", written over a horizontal line.

Paul F. Hanzlik

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